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Case No. 20110428-CA

IN THE UTAH COURT OF APPEALS

Jamis M. Johnson,
Defendant/Appellant,

vs.

State of Utah,
Plaintiff/Appellee.

Appellant's Brief

APPEAL FROM ORDER AND JUDGMENT REVOKING PROBATION, THE
HONORABLE JAMES BRADY, FOURTH DISTRICT COURT, MILLARD
COUNTY, UTAH, PRESIDING.

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FILED
UTAH APPEALS

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Ames v. Maas, 846 P.2d 468 (Utah Ct. App. 1993)

Crookston v. Fire Ins. Exch., 860 P.2d 937 (Utah 1993)

Smith v. Cook, 803 P.2d 788 (Utah 1990)

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State Statutes

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Utah Code Annotated §77-18-1(11)(b)

Utah Code Annotated §77-18-1(12)(a)(i)

Case No. 20110428-CA

IN THE UTAH COURT OF APPEALS

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Defendant/Appellant,

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State of Utah,
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JURISDICTIONAL STATEMENT

Jamis M. Johnson ("Johnson") appeals the finding of the Fourth Judicial District Court finding him in violation of the terms of his probation and subsequent order revoking probation, and imposing the original sentence in this matter. This Court has jurisdiction pursuant to Utah Code §78A-4-103(2)(e).

STATEMENT OF THE ISSUES

Issue #1: Whether Johnson's probationary period had lapsed prior to the State filing its Order to Show Cause in October 2010, thereby depriving the district court of jurisdiction to receive evidence of an alleged probation violation and/or impose a sanction for a perceived violation.

Standard of Review: Although Defendant was placed on probation after the conclusion of a criminal jury trial, probation revocation proceedings are civil in nature. Such proceedings are entirely independent of any related criminal proceeding. *State v. Hudecek*, 965 P.2d 1069, 1071 (Utah Ct. App. 1998). The issue presented above challenges whether the district court had jurisdiction to hear allegations of Johnson's violations of probation, and therefore challenges a conclusion of law. *See State v. Reber*, 171 P.3d 406 (Utah 2007); *see also Salt Lake City v. Weiner*, 219 P.3d 72 (Utah Ct. App. 2009). A trial court's conclusion of law in civil proceedings, as well as in criminal cases, is reviewed for correctness. *See Black v. Allstate Ins. Co.* 100 P.3d 1163; *see State v. Tiedemann*, 162 P.3d 1106.

Issue #2: Whether Johnson violated the term of his probation requiring that he report to Adult Probation and Parole even though Johnson, prior to failing to report as instructed, filed a Motion to Stay and Certificate of Probable Cause which specifically requested that his probation be converted from supervised probation to Court probation, and where Johnson's motions were granted.¹

Standard of Review: Although Defendant was placed on probation after the conclusion of a criminal jury trial, probation revocation proceedings are civil in nature. Such proceedings are entirely independent of any related criminal proceeding. *State v. Hudecek*, 965 P.2d 1069, 1071 (Utah Ct. App. 1998). The issues set forth by the Defendant/Appellant for determination by this Court challenge the trial court's

¹ If Issue #1 is decided favorably for the Appellant, then Issue #2 is moot.

discretionary ruling that Defendant/Appellant violated a term of his probation. A trial court's discretionary ruling will be reversed if the ruling "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." *Kunzler v. O'Dell*, 855 P.2d 270, 275 (Utah Ct. App. 1993); see *Ames v. Maas*, 846 P.2d 468, 476 (Utah Ct. App. 1993). A trial court abuses its discretion if there is "no reasonable basis for the decision." *Crookston v. Fire Ins. Exch.*, 860 P.2d 937, at 938 (Utah 1993).

Issue #3: Whether Johnson violated the term of his probation requiring that he commit no further law violations where Johnson was convicted of mail fraud in federal court, but where the convictions relate to conduct which pre-date Johnson's sentence and imposition of probationary terms in the state district court case.

Standard of Review: Although Defendant was placed on probation after the conclusion of a criminal jury trial, probation revocation proceedings are civil in nature. Such proceedings are entirely independent of any related criminal proceeding. *State v. Hudecek*, 965 P.2d 1069, 1071 (Utah Ct. App. 1998). The issues set forth by the Defendant/Appellant for determination by this Court challenge the trial court's discretionary ruling that Defendant/Appellant violated a term of his probation. A trial court's discretionary ruling will be reversed if the ruling "is so unreasonable that it can be classified as arbitrary and capricious or a clear abuse of discretion." *Kunzler v. O'Dell*, 855 P.2d 270, 275 (Utah Ct. App. 1993); see *Ames v. Maas*, 846 P.2d 468, 476 (Utah Ct. App. 1993). A trial court abuses its discretion if there is "no reasonable basis for the decision." *Crookston v. Fire Ins. Exch.*, 860 P.2d 937, at 938 (Utah 1993).

CASE STATEMENT

District Court's Legal Conclusion That Johnson's Probation Was Tolled When the State Filed an Order to Show Cause, Thereby Extending Johnson's Probationary Term, Was In Error

Johnson was convicted of Securities Fraud, a 2nd degree Felony, on or about March 7, 2007, at the conclusion of a trial by jury. Johnson was sentenced to serve three-hundred and sixty-five (365) days in the Millard County Jail and was placed on supervised probation with the office of Adult Probation and Parole for thirty-six (36) months. The sentence was imposed on or about June 6, 2007. Accordingly, the thirty-six (36) month term of probation was set to expire on or about June 6, 2010.

On August 31, 2007, an Order to Show Cause alleging a probation violation was filed and an evidentiary hearing, with both parties in attendance, was held on October 10, 2007. At the conclusion of the October 10, 2007 hearing the Defendant's probation was revoked and reinstated for thirty-six (36) months. Effectively, Johnson's thirty-six (36) month period of probation began anew, and was then set to expire on or about October 10, 2010.

On or about June 11, 2008, another Order to Show Cause alleging probation violations was filed and an evidentiary hearing was held on October 20, 2008. However, the October 20, 2008 hearing did not result in a finding or order that altered the expiration of Defendant's thirty-six (36) month term of probation.

On or about March 31, 2009, yet another Order to Show Cause was filed alleging probation violations. This Order to Show Cause was based on a federal indictment of the

Defendant, and a hearing was scheduled for April 15, 2009. The April 15, 2009 hearing was not substantive in nature, and at its conclusion a status conference was scheduled for July 8, 2009. Again, the July 8, 2009 hearing was not dispositive, and review hearing was set for December 9, 2009. At the conclusion of the December 9, 2009 review hearing, another review hearing was set for March 31, 2010.

Neither the April 15, 2009 hearing, nor the July 8, 2009 hearing, nor the December 9, 2009 hearing, nor the March 31, 2010 hearing resulted in any order or finding from the District Court which altered the status or terms of Johnson's probation. Accordingly, Johnson's thirty-six (36) month period of probation remained set to expire on or about October 10, 2010.

At some point prior to January 20, 2010, the Utah Court of Appeals rendered a decision remanding the case back to the district court for matters involving restitution. However, nothing in the Utah Court of Appeals' decision altered or affected the expiration date of Johnson's probation.

On or about June 23, 2010, yet another Order to Show Cause alleging probation violations was filed and at the conclusion of the corresponding August 30, 2010 evidentiary hearing, the District Court found the Defendant in violation of his probation for failing to obtain verifiable full-time employment. The District Court further revoked and reinstated the Defendant's probation for thirty-six (36) months, which effectively changed the date that the Defendant's probation would have otherwise expired.

However, the Defendant filed his Notice of Appeal on September 7, 2010, and the matter is currently under review with the Utah Court of Appeals.² Further, Johnson filed a Motion to Stay Sentence Pending Appeal. Johnson's motion was granted and the District Court's order specifically stayed the previous order of the District Court wherein Defendant's probation was revoked and reinstated.³

The State then filed a notice of probation violation and order to show cause on November 10, 2010, alleging that Johnson failed to report to Adult Probation and Parole as required by the terms of his probation. At the conclusion of the May 17, 2011 evidentiary hearing the Court found Johnson in violation of probation.

However, Johnson's probation had already expired on October 10, 2010. Johnson acknowledges that the district court's August 30, 2010 findings and sanction would change his probation expiration date to extend beyond November 10, 2010, but that finding and sanction have been stayed pending appeal. Therefore, the district court did not have jurisdiction to entertain allegations of violations of probation after October 10, 2010, unless and until Johnson's appeal of the August 30, 2010 findings fails, and the stay is lifted.

² Johnson v. State, Case No. 20100734-CA. As of the date of filing this Brief, it is believed that the Utah Court of Appeals has not yet issued its opinion in this matter.

³ For the reader's convenience, a copy of the November 3, 2010 Order, and the Certificate of Probable Cause are provided with this brief in Addendum A.

Even If it is Determined that Johnson's Probation Had Not Expired, Johnson Reasonably Relied on the Probable Cause Certificate Which Required Johnson to Report to the Court, Not to Adult Probation and Parole

On November 3, 2010, the district court issued an order staying August 30, 2010 sanction wherein Johnson's probation was revoked and reinstated. The district court also issued a certificate of probable cause which ordered that, while the matter was on appeal, Johnson would report to the district court on a monthly basis.

At the May 17, 2011 evidentiary hearing, the State argued that Johnson violated the term of his probation when he failed to report to Adult Probation and Parole as previously directed. Johnson responded, in kind, that he had reported to the Court on a monthly basis as provided for in the Certificate of Probable Cause.

The district court disagreed with Johnson's assertion that he was required to report to the court and found that he failed to comply with the instructions of Adult Probation and Parole and was therefore in violation of the relevant term of his probation.

Additionally, the Court found that even if Johnson understood that he was to report directly to the Court on a monthly basis, that Johnson had failed to comply. However, no evidence was offered that Johnson failed to report to the Court on a monthly basis. In fact, Johnson testified that he had in fact reported monthly. Yet, the district court made a sua sponte finding that Johnson had failed to report to the district court on a monthly basis.

Accordingly, this Court should find that Johnson was entitled to report to the district court, instead of with Adult Probation and Parole, as provided for in the Certificate of Probable Cause, and therefore find that there was no violation of probation. Alternatively, the issue should be remanded to the district court to take evidence as to whether Johnson reported to the Court on a monthly basis.

Johnson Did Not Commit Any Federal Crimes While On Probation in the District Court Case; Johnson's Federal Criminal Convictions are the Result of Alleged Wrongdoing Prior to the Johnson's Sentence and Imposition of Probation in District Court

Johnson was convicted of various federal crimes on March 18, 2011. At the May 17, 2011 evidentiary hearing in district court the State argued that Johnson violated the term of his probation which required that he commit no further law violations, whether state, local or federal. The State presented the district court with evidence of Johnson's conviction and asked the Court to determine that Johnson violated the relevant term of his probation.

However, Johnson was sentenced and placed on probation in the district court case on June 6, 2007. All federal charges that Johnson was convicted of relate to, and allege, conduct that took place prior to June 6, 2007, and thus prior to the time in which Johnson was on probation.

True, there were initially federal charges that alleged illegal conduct on dates after Johnson was placed on probation. But, all allegations alleging illegal conduct after June 6, 2007 were dismissed. In short, Johnson's federal convictions found him guilty of

committing illegal acts prior to June 6, 2007 and therefore cannot serve as the basis for a finding that Johnson violated terms of probation which were not imposed until after that date.

The district court itself realized its error, and on June 17, 2011 issued an order correcting its error. However, the State filed a Motion to Vacate and Request to Remand the June 17, 2011 order because Johnson had already filed his notice of appeal, thus depriving the district court of jurisdiction to correct its error.

As the district court was in error in finding that Johnson's federal convictions serve as a basis to violate his probation in district court, this Court should overturn the May 17, 2011 finding.

Alternatively, this Court should remand the issue to the district court, allowing the district court to enter its June 17, 2011 order wherein the district court acknowledged, and sought to correct, its error.

ARGUMENT

I.

THE DISTRICT COURT DID NOT HAVE JURISDICTION IN THIS MATTER AS JOHNSON'S PROBATIONARY TERM EXPIRED ON OCTOBER 10, 2010, ONE MONTH PRIOR TO THE STATE FILING ITS NOVEMBER 12, 2010 ORDER TO SHOW CAUSE ALLEGING PROBATION VIOLATIONS

Generally, a "court's power to grant, modify, or revoke probation is purely statutory." *Smith v. Cook*, 803 P.2d 788 at 791 (Utah 1990). Utah Code Annotated §77-

18-1(11)(b), states that, “The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.”

Admittedly, numerous Orders to Show Cause have been filed, for various reasons, throughout the period of Johnson’s probation. The alleged probation violation for this Court’s consideration stems from the March 31, 2009 an Order to Show Cause based on allegations that the Defendant violated a term of his probation in that he was criminally indicted in federal court.

Johnson anticipates that the State will argue that, as a result of the March 31, 2009 issuance of an Order to Show Cause, Johnson’s probationary period was tolled. Consequently, Johnson would be found to have been on probation, and required to comply with all the terms of his probation, on November 10, 2010, when the State filed its notice of probation violations and order to show cause.

While it may initially appear that the State’s position carries weight, this Court must consider the fact that the rder to show cause in question was more than two years old before an evidentiary hearing was ever held. More importantly, no order was ever entered by this Court that revoked, extended, or otherwise altered the Defendant’s probationary period prior to the evidentiary hearing which was held on May 17, 2011.

Utah Code Annotated §77-18-1(12)(a)(i) states that,

“Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.”

The Utah Supreme Court considered a case with facts and issues remarkably similar to those now present before this Court when it decided *State v. Green*, 757 P.2d 462 (Utah 1988). Terry Green (“Green”) was convicted of issuing bad checks and sentenced by the trial court on May 29, 1984. Green was placed on probation with one of the terms of probation being that he would not violate federal, state or local laws.

Green’s case was reviewed several times by the trial court and on February 18, 1986, the office of Adult Probation and Parole reported that Green had been charged with two counts of sodomy on a child and one count of attempted rape of a child. Green was in fact convicted of all three offenses on June 26, 1986.

Green appealed the new convictions and, as a result of the pending appeal, the probation violation matter was continued to permit the appeal to be decided. No order respecting the status of Green’s probation was entered. However, the trial court later discovered that Green had not filed an appeal and therefore found that the new convictions resulted in a violation of his probation.⁴

Green then appealed that finding, arguing that his probation had terminated prior to the finding of a probation violation. Green argued that unless the court acted to revoke or extend the probationary term, prior to the expiration of probation, that the trial court lost jurisdiction over the Defendant.

⁴ The trial court also ruled that Utah Code Annotated §77-18-10(a) was unconstitutional because it limited the sentencing power of judges. However, neither Green nor the State addressed that issue on appeal as both parties agreed that such a holding was unnecessarily broad. Though the Utah Supreme Court did address the issue of the statute’s constitutionality, the issue is not addressed here as it is superfluous to the facts and arguments of this case.

In response to Green's argument, the State argued that probation is not automatically terminated once the probationary period expires, and therefore the court did not lose jurisdiction over Green. The State further argued for an interpretation of the probation statute that would allow a trial court to revoke probation after the expiration of the probationary period if the State alleged that a violation occurred during the probationary period.

Ultimately, the Supreme Court reversed the trial court's order revoking probation and remanded the case to the trial court for entry of an order terminating custody. The Supreme Court held that:

"The State's interpretation of the statute would create absurd results. Defendants would be left in a perpetual state of limbo; although their probation would appear to have been terminated, usually by entry of an order to that effect, defendants would actually be subject to a continued term of fictional supervision. This indefinite probationary term could theoretically be revoked many years after the original imposition and suspension of sentence. Decades could pass and then, based upon the discovery of a probation violation which had occurred during the statutory period, a court could revoke a term of probation thought to have been terminated long ago. This construction would obviate the certainty and regularity created by the statute and ignore the plain meaning of the word 'terminate.'" *Id.* at 464.

Defendant recognizes that in *Green* the argument centered on a statutory provision different from the statute at the center of the case before this Court. *Green* relied upon a statute which provided that probation terminates, by operation of law, after eighteen (18) months if a defendant doesn't commit any probation violations. In fact note three (3) of the decision specifically states that, "Because the revocation proceedings in this case were not initiated until after the statutory probation term had expired, we need not reach

the issue of the retention of jurisdiction when proceedings have been initiated but not completed within the eighteen-month term.” *Id.*

The issue which the Supreme Court did not reach is precisely the issue the parties are asking this Court to now consider. To wit, whether the district court has jurisdiction to hear allegations of probation violations once the probationary term has expired, but where no existing order revokes, extends, or otherwise alters the expiration date of Defendant’s probation, but where an Order to Show Cause was filed within the original probationary period.

Here, Johnson is accused of having violated the term of his probation which required that he not violate any federal, state or local law. In support of the allegation the State offers evidence of a federal indictment. Like *Green*, the date upon which Johnson’s term of probation would have, or did, expire has past. Yet, prior to that date there was no hearing to determine the merit of the State’s November 10, 2010 probation violation allegations. More importantly, and also like *Green*, there was absolutely no order in place, at the time of the expiration of Johnson’s probation that revokes, extends or otherwise effects the expiration of Defendant’s probation (except of course for the August 30, 2010 order which is addressed in section II below).

Accordingly, as Defendant’s thirty-six (36) month probation period has expired, and because there is no final finding that Johnson violated his probation, nor is there any final order effecting the expiration of Defendant’s probation, the Defendant’s probation cannot be indefinitely tolled. To hold otherwise would be to hold that “defendants would

actually be subject to a continued term of fictional supervision,” *id.* at 464, a holding which the Supreme Court rejected.

II.

JOHNSON DID NOT VIOLATE PROBATION BY FAILING TO REPORT TO ADULT PROBATION AND PAROLE BECAUSE HIS PROBATION HAD EFFECTIVELY BEEN CONVERTED TO COURT PROBATION

Subsequent to the district court finding Johnson in violation of his probation on August 30, 2010,⁵ Johnson filed, in his pro se capacity, a Motion to Stay Sentence Pending Appeal and Certificate of Probable Cause. Ultimately, his motion and certificate were granted⁶. Further, the Certificate of Probable Cause clearly states that Johnson, during the time period in which his probation was stayed pending appeal, was required to report to the Court on a monthly basis.

As the district court took evidence during the May 17, 2011 hearing, the State argued that Johnson violated the term of his probation that he report to Adult Probation and Parole when instructed to do so. In response, Johnson pointed out the requirement set forth, with regards to reporting, in the Certificate of Probable Cause only requires that he report to the Court.

At the conclusion of arguments, the district court stated that Johnson’s argument that he was only required to report to the court, and not to Adult Probation and Parole,

⁵ As stated previously, the district court’s finding of a probation violation is currently under appellate review in Case No. 20100734-CA.

⁶ For the reader’s convenience, a copy of the November 3, 2010 Order, and the Certificate of Probable Cause are provided with this brief in Addendum A.

was not persuasive. The Court stated that “I also don’t believe that he was on court probation, but if he understood it that way, he didn’t comply. He didn’t comply with AP&P probation either.” Transcript p. 70.

In support of its finding, the court stated that “[Johnson] claims that he reported to the Court on a monthly basis. And I appreciate the argument, but it’s not persuasive. I don’t believe I ever met with Mr. Johnson. I don’t think he’s ever provided me any information regarding his housing, his employment, his income, his opportunities or his efforts to make restitution.” Id. at 69-70.

However, other than Johnson’s testimony that he had in fact reported to the Court on a monthly basis, no evidence was presented as to Johnson’s compliance with the requirement that he report to the Court on a monthly basis. The Court, sua sponte, simply declared that Johnson had not reported, or at least that the judge presiding over the matter was not aware of his reporting.

Certainly, the district court, when placing a defendant on court probation can require that the probationer report to the court with any level of detail satisfactory to the court. However, the court previously made no request of Johnson to provide the court with information regarding his housing, his employment, his income, his opportunities or his efforts to make restitution. The Certificate of Probable Cause simply stated that Johnson was to report to the Court on a monthly basis.

Therefore, Johnson was in compliance with the order of the Court set forth in the Certificate of Probable Cause. Alternatively, this Court should remand this matter to the District Court in order for evidence to be taken as to whether Johnson did in fact report to the Court on a monthly basis as required by the Certificate of Probable Cause.

III.

JOHNSON DID NOT VIOLATE THE TERM OF HIS PROBATION THAT HE COMMIT NO FURTHER LAW VIOLATIONS BECAUSE THE FEDERAL CONVICTIONS FOR MAIL FRAUD RELATE TO CONDUCT WITH PRE-DATES JOHNSON'S PLACEMENT ON PROBATION

At the May 17, 2011 evidentiary hearing the State argued that Johnson violated the term of his probation that he commit no violations of law, whether state, local or federal. In support of its allegation, the State introduced evidence that Johnson was convicted in federal court of mail fraud. That conviction was dated March 18, 2011.

However, as was argued to the district court during the evidentiary hearing, all federal convictions involving Johnson stem from conduct that took place, according to the federal indictment, prior to June 6, 2007 – the date upon which Johnson was placed on supervised probation. In fact, the only two allegations from the federal indictment, Counts 10 and 22, which allege conduct that took place while Johnson was on probation were dismissed by the office of the U.S. Attorney on March 18, 2011.

In fact the Court ultimately came to this conclusion as well. Though the Court found Johnson to have violated the above stated term of his probation, the Court reversed its own finding in an order dated June 17, 2011.⁷

The district court, subsequent to Johnson's pro se filing of a Motion to Extend Jail Term 30 days, reviewed its finding and ruling from the May 17, 2011 evidentiary hearing. The court came to the conclusion that it had made a clear and unambiguous determination that Defendant could not be found in violation of probation for actions he took prior to being placed on probation. The court recognized its error in finding Johnson in violation of his probation, based on allegations of committing federal crimes when the allegations in the federal indictment alleging conduct occurring during Johnson's probation, when those very allegations were dismissed. The Court's June 17, 2011, order, in paragraph 4, states that its "conclusion was made in error. Upon review it is clear that the dates of these offenses predate Defendant's sentencing in the present case."

However, after the Court recognized and reversed its finding and order, the State filed a Motion to Vacate Order, arguing that because Johnson filed his Notice of Appeal before the Court corrected its error, therefore depriving the district court of jurisdiction to make any additional findings or orders while the matter was on appeal. To date, it does not appear as though the State's request for remand has been granted. Accordingly, Johnson believes it is either in the hands of this appellate court to correct the district

⁷ For the reader's convenience, a copy of the Jun 17, 2011 Order is provided with this brief in Addendum .

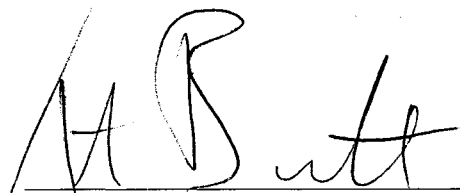
court's error, as the district court attempted to do itself, or to remand the issue to the district court and allow the district court's June 17, 2011 order to stand.

CONCLUSION

For the foregoing reasons, this Court should find that the district court did not have jurisdiction over Johnson while his probation was stayed pending appeal.

Alternatively, this Court should find that the district court's finding that Johnson violated the terms of his probation was arbitrary and capricious, as there was no reasonable basis to find that Johnson failed to report to Adult Probation and Parole when the Certificate of Probable Cause order Johnson to report to the Court; also, that there was no reasonable basis to find that Johnson committed violations of law while on probation because Johnson's federal convictions allege conduct which occurred prior to Johnson's sentencing and imposition of probation in district court.

Respectfully submitted December 22, 2011.

A handwritten signature in black ink, appearing to read 'Tate W. Bennett', written over a horizontal line.

Tate W. Bennett, Esq.
Millard County Public Defender

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Utah, resident of and with my office in Fillmore, Utah; that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, a true and correct copy thereof on December 22, 2011.

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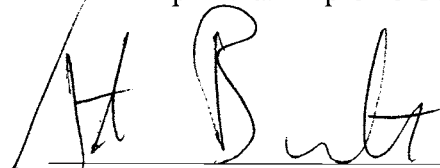
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A digital copy of the brief will be provided to both the Utah Court of Appeals and Counsel for Plaintiff/Appellee within fourteen days after the filing of this brief as per Utah Supreme Court Order No. 8

A handwritten signature in black ink, appearing to read 'Tate W. Bennett', written over a horizontal line.

Tate W. Bennett

Addenda

Addendum A

Addendum A

IN THE FOURTH DISTRICT COURT
MILLARD COUNTY, STATE OF UTAH

2010 NOV -4 PM 3:25

FILED BY

STATE OF UTAH,
Plaintiff,

vs.

JAMIS M. JOHNSON,
Defendant.

ORDER

Case No. 051700056

Judge James Brady

Defendant, Jamis Johnson's Motion To Stay Sentence Pending Appeal, ("Motion to Stay") and Application For Certificate of Probable Cause, ("Application") came before the Court at a regularly scheduled and duly noticed hearing at 9:00 a.m., October 13, 2010. Defendant Johnson was present, and also Tate Bennett, who, upon affidavit of indigence, was duly appointed Mr. Johnson's public defender for the purpose of handling the appeal in this matter. No representative from the State was present and no responsive pleadings were on file from the State. The Court continued the hearing until the afternoon so that counsel for the State could be contacted. The matter was reconsidered at 3:00 p.m. Present were Mr. Johnson and counsel Tate Bennett. The Court Clerk reported that since the morning continuance, she had contacted Assistant Attorney General Mark Baer and that he stated that he did not receive notice of the hearing and would not be available in person or telephonically for argument on this matter this day nor for the next ensuing two weeks. The Court Clerk affirmed that notice of this hearing was duly sent to Assistant Attorney General Mark Baer and to Defendant Johnson on October 4, 2010. The Court had read

the pleadings of Defendant and had reviewed the file and record in this matter. It was determined that Defendant Johnson had mailed copies of all pleadings to Assistant Attorney General Baer on September 7, 2010 but that the form of the Certificate of Probable Cause did not bear a signed mailing certificate and, the Court thus sent all parties a notice of an ex parte communication as to the form of Certificate of Probable Cause. A copy of the Certificate of Probable Cause was then further mailed by Defendant Johnson to Assistant Attorney General Mark Baer on September 21, 2010 and all pleadings hand delivered on October 22, 2010 per letter in the record of Defendant. The record reflects that the Court Clerk duly sent notice of the hearing to Assistant Attorney General Mark Baer. The State has not filed any response to Defendant's Motion To Stay or to the Application, and has not appeared in the matter, and, although reached by the Court Clerk, Assistant Attorney General Baer declined to appear in person or telephonically or have other Assistant Attorneys General appear in behalf of the State.

The Court duly and fully reviewed Defendant Johnson's Motion to Stay Sentence Pending Appeal, and the Application For A Probable Cause Certificate, and all related pleadings, and the same were also reviewed by Defendant's Public Defender Tate Bennett, who was appointed as appellate counsel for the purposes of the Appeal. Defendant Johnson represented himself for argument on the pending Motion To Stay and the Application before the Court.

The Court, having reviewed the pleadings, having ascertained that the State had due notice and has not filed a responsive pleading, and the time for

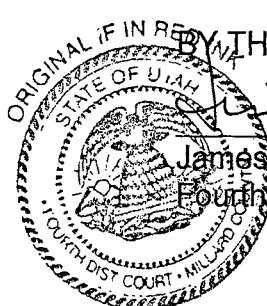
response having passed, and the State declined to appear, and there appearing good cause in support of the motion and the application of Defendant,

IT IS HEREBY ORDERED that Defendant's Motion For Stay of Sentence Pending Appeal is granted as follows:

1. The sentence entered August 30, 2010 revoking the probation of Defendant Johnson and reinstating it for a further 36 months is hereby ~~suspended~~ ^{Stayed} pending the appeal of this sentence; and
2. Defendant Johnson is released from incarceration in the Millard County Jail with credit for time served.

DATED this 3 ^{November} day of ~~October~~, 2010.

ORIGINAL IF IN REPLY BY THE Court
STATE OF UTAH
James Brady
Fourth District Judge



Jamis M. Johnson
c/o Millard County Jail
765 So. Hwy 99
Fillmore, UT 84631
Tel. 801-530-0100

2010 NOV -4 PM 3:25

FILED BY

Defendant Pro Se

IN THE FOURTH JUDICIAL DISTRICT COURT
MILLARD COUNTY, STATE OF UTAH

STATE OF UTAH

Plaintiff

Vs.

JAMIS M. JOHNSON

Defendant

**CERTIFICATE OF PROBABLE CAUSE
AND ORDER OF RELEASE**

Case No. 051700056

Judge James Brady

Defendant Jamis Johnson's Notice of Appeal and Application for Certificate of Probable Cause came regularly before the Court, the Honorable James Brady, Fourth District Court Judge presiding. The Court after having reviewed the pleadings on file and for good cause appearing now finds and certifies as follows:

1. The appeal is not being taken for the purpose of delay.
2. The appeal raises substantial issues of law or fact reasonably likely to result in reversal, an order for a new trial or a sentence that does not include a term of incarceration in jail or prison.

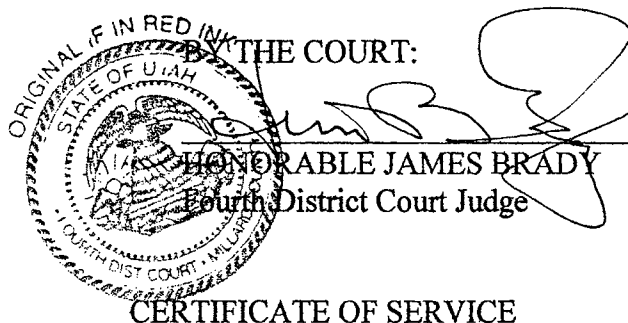
IT IS FURTHER HEREBY ORDERED:

The Court determines defendant is not a flight risk and that the defendant does not pose a danger to any other person or the community and is released pending appeal upon the following

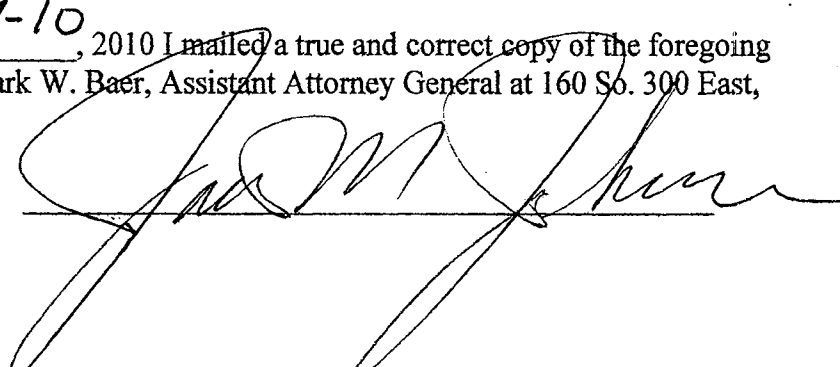
least restrictive conditions that the court has determined will reasonably assure the appearance of the person as required and the safety of persons and property in the community:

- a. not commit a federal, state or local crime during the period of release;
- b. abide by specified restrictions on personal associations with any other person engaged in any criminal activity, remain residing at his usual place of abode, and engage in no travel outside the State without further order of the Court;
- c. avoid all conduct with the victim or victims of the crime(s), any witness who might testify concerning the offenses if the appeal results in a reversal or an order for a new trial;
- d. continues to report on a regular basis to the Court by the 15th day of each month;
- e. refrain from possessing a firearm, destructive device or other dangerous weapon;
- f. except as prescribed by a licensed medical practitioner, refrain from possessing or using any narcotic drug or other controlled substance.

DATED this 3 day of November, 2010



I hereby certify that on 9-17-10, 2010 I mailed a true and correct copy of the foregoing Certificate of Probable Cause to Mark W. Baer, Assistant Attorney General at 160 So. 300 East, Salt Lake City, UT 84114.



Addendum B

Addendum B

FOURTH DISTRICT COURT-MILLARD

2011 JUN 17 PM 5:06

FILED BY JSFOURTH DISTRICT COURT, STATE OF UTAH
MILLARD COUNTY DEPARTMENT

STATE OF UTAH, Plaintiff, vs. JAMIS J. JOHNSON, Defendant.	ORDER Case No. 051700056 Date: June 17, 2011 Judge: James Brady
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Having reviewed Defendant's pro se expedited motion to amend and extend jail term 30 days to allow for stay and probable cause process, and Plaintiff's response thereto, the court reviewed the records and recordings of the May 17, 2011 hearing. Based on that review the court enters the following findings:

The May 17, 2011 hearing was to consider allegation of probation violations by Defendant as a result of criminal convictions in a separate federal case. It was also to determine appropriate sanctions for findings of probation violations determined on April 21, 2011 as well as sanctions, if any arising out of the alleged violations based on the federal convictions.

With regards to only the violations related to the federal violations, after review the court now makes the following findings:

1. The court made a clear and unambiguous determination that Defendant could not

be found in violation of probation for actions he took prior to being placed on probation.

2. Although two of the counts in the Federal trial were alleged to have occurred on dates following Defendant being placed on probation by this court, upon further argument and examination of the document, at the May 7, 2001 hearing, the court concluded that counts 10 and 22 of the federal indictment were dismissed by the United States Attorney, and did not result in a conviction. This court ruled that these two counts would not be considered a violation of Defendant's probation.
3. This court explicitly ruled that it would not consider as evidence of a violation of probation, any convictions in the federal case for actions taken before the date of sentencing in this case.
4. On May 17, 2011, when considering the States allegations of convictions on counts 18, 19, 21, 23, 27, 28 and others, contained in the federal indictment, this court came to the conclusion that Defendant was engaged in wrong doings including conspiracy and aiding and abetting others to commit mail fraud and wire fraud after being placed on probation. This conclusion was made in error. Upon review it is clear that the dates of these offenses predate Defendant's sentencing in the present case.
5. At the time of determining an appropriate sanction for defendant's violation of his

probation, this court considered defendant's perceived continuing criminal activities a significant violation, sufficient to justify the revocation of probation, and the imposition of the statutory sentence.

6. In that the court erred in believing that defendant's criminal conduct continued after being placed on probation, it is appropriate for the court to review and correct the sanction it issued at the hearing on May 17, 2011.
7. The evidence at the hearing was clear and convincing that defendant violated probation when he failed to report to his probation officer.
 - a. Defendant does not dispute that he failed to report to his probation officer, despite knowledge that the probation officer attempted to contact him several times. Defendant claims he was relieved from his obligations to contact his probation officer either because of an implication contained in an order of this court, or because his probation period had lapsed.
 - b. This court did not order the termination of Defendant's probation, nor his obligation to report to his probation officer.
 - c. Although Defendant claims his obligation was changed from reporting to his probation officer to an obligation to report to the court on a monthly basis, this interpretation is only partially correct. The order did not terminate Defendant's probation, but did order him to report monthly to the court.

- d. As to his argument that reporting to the court supplanted his obligations to the probation officer, it did not. It should also be noted that even if it did Defendant also did not report to the court.
- e. As previously determined by this court, Defendant's probation period did not lapse before the order to show cause was issued in October 2011 for Defendant's various probation violations.
8. This court previously found that Defendant violated his probation by failing to inform the probation department of his then current residence, or by changing his residence without notification to his probation officer, and for his failure to report to his probation officer on October 21, 2011.
9. Previously Defendant had been found in violation of his probation agreement and was sentenced to 60 days in jail. That matter is on appeal at this time.
10. Based on the court's review of its findings and the order issued May 17, 2011, the court finds it is appropriate to amend its order.
11. Defendant's probation is revoked and reinstated for 36 months. Defendant is ordered to serve 120 days in the Millard County jail. Defendant shall come before the court for review before his release from jail.

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Dated this 17th day of June, 2011.



BY THE COURT:

Jim Brady
JAMES BRADY
DISTRICT COURT JUDGE

By Irene Scott
STAMP USED AT DISCRETION OF JUDGE